

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ANTOINE D. PEARSON,

Petitioner,

vs.

TROY STEELE,

Respondent.

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Case number 4:11cv1037 TCM

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Antoine E. Pearson, for the appointment of counsel.

Petitioner seeks habeas relief on four grounds from an aggregate term of twenty-five years imprisonment for his conviction following a jury trial of two felonies. Respondent counters that three of the grounds are without merit and one is procedurally barred.

Petitioner moves for appointment of counsel, explaining that he is without funds to retain counsel and has been unable to obtain counsel due to that lack of funds.

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings, see **Morris v. Dormire**, 217 F.3d 556, 558 (8th Cir. 2000); "instead, [the appointment of counsel] is committed to the discretion of the trial court," **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997). In considering whether to appoint counsel, the factual and legal complexity of the case and the petitioner's ability to investigate and articulate his claims should be considered. **Morris**, 217 F.3d at 558-59; **McCall**, 114 F.3d at 756; **Nachtigall v. Class**, 48 F.3d 1076, 1081-82 (8th Cir. 1995). Counsel must be appointed, however, if an evidentiary hearing is to be held. See Rule 8(c), Rules Governing Section 2254 Cases in the

United States District Courts (mandating that counsel be appointed if an evidentiary hearing is to be held); accord Armstrong v. Kemna, 534 F.3d 857, 868 n.5 (8th Cir. 2008).

In the instant case, the issues articulately raised in the petition appear to be neither factually nor legally complex and to be capable of being resolved without an evidentiary hearing. Additionally, Petitioner has articulately presented the facts relevant to his cogent legal arguments. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED** without prejudice. [Doc. 3]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 9th day of August, 2011.